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20 UNITED STATES DISTRICT COURT
 21 CENTRAL DISTRICT OF CALIFORNIA

22 ASSOCIATION FOR INFORMATION
 23 MEDIA AND EQUIPMENT, an Illinois
 24 nonprofit membership organization; and
 25 AMBROSE VIDEO PUBLISHING, INC., a
 26 New York corporation,
 27 Plaintiffs,

28 v.

29 THE REGENTS OF THE UNIVERSITY OF
 30 CALIFORNIA, a California corporation;
 31 MARK G. YUDOF, an individual; DR.
 32 GENE BLOCK, CHANCELLOR OF THE
 33 UNIVERSITY OF CALIFORNIA, LOS
 34 ANGELES, an individual; DR. SHARON
 35 FARB, an individual; LARRY LOEHER, an
 36 individual; PATRICIA O'DONNELL, an
 37 individual; and John Does 1-50,
 38 Defendants.

Case No.: CV 10-09378 CBM
 (MANx)SECOND AMENDED
 COMPLAINT FOR:
 (1) Breach of Written Contract;
 (2) Anticipatory Breach of
 Written Contract
 (3) Copyright Infringement;
 (4) Deprivation of Property
 without Due Process
 (5) Declaratory Relief
 (6) Violation of 17 U.S.C. § 1201;
 (7) Breach of Covenants of Good
 Faith and Fair Dealing;
 (8) Unjust Enrichment;
 (9) Tortious Interference with
 Contractual Relations
 (10) Tortious Interference with
 Prospective Business Advantage
 DEMAND FOR JURY TRIAL

1 Association for Information Media and Equipment (“AIME”) and Ambrose
2 Video Publishing, Inc (“AVP” or “Ambrose”) (collectively, the “Plaintiffs”) allege as
3 follows:¹
4

5 NATURE OF THE ACTION

6 1. The Defendants in this case are The Regents of California (“Regents”) in their
7 official capacity as an arm of the State of California governing the University of
8 California at Los Angeles (“UCLA”), and in their individual capacities as members of
9 the Board of Regents; Mark G. Yudof, President of the University of California, in his
10 official and individual capacity (“Mr. Yudof”); Dr. Gene Block, Chancellor of UCLA,
11 in his official and individual capacity (“Dr. Block”); Dr. Sharon Farb, UCLA’s
12 Associate University Librarian for Collection Management and Scholarly
13 Communication, in her official and individual capacity (“Dr. Farb”); Larry Loehner,
14 UCLA’s Associate Vice Provost and Director of Instructional Development, in his
15 official and individual capacity (“Mr. Loehner”); and Patricia O’Donnell, Manager of
16 UCLA’s Instructional Media Collections and Services and Media Lab, in her official
17 and individual capacity (“Ms. O’Donnell”); and John Does 1-50, who are a) other
18 individuals, presently unknown to Plaintiffs, who have been designated or in the
19 future are designated to replace any of the other named Defendants in their official
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25 ¹ For purposes of preserving a complete record for appeal to the Ninth Circuit,
26 Plaintiffs have retained in this Second Amended Complaint those claims which the
27 Court dismissed with prejudice in its Order Granting Defendant’s Motion to Dismiss
28 filed October 3, 2011.

1 capacity, and b) any other individuals, including but not limited to UCLA faculty
2 members and Information Technology (“IT”) personnel, who in their official and
3 individual capacities, on a direct or contributory basis, participated in the actions
4 complained of herein (collectively the “Defendants”).

6 2. The Plaintiffs in this case are AVP, an educational video producer and holder of
7 all exclusive rights associated with the specific copyrighted works in question in this
8 case; and AIME, a national trade association whose public mission is to help ensure
9 copyright education and compliance, and whose membership includes AVP and other
10 video copyright owners and/or exclusive rightsholders. A list of AIME members is
11 attached hereto as Exhibit 1.

14 3. This case involves the Defendants’ systematic actions to take copy-protected
15 DVDs, licensed by AVP and other AIME members, and copy, reformat, stream,
16 transmit, create derivative works, publicly distribute, publicly display and/or publicly
17 perform these DVDs via the Internet or the UCLA intranet, and to allow faculty to
18 copy, create derivative works, edit, perform and/or display, and students to copy,
19 display and perform these works in flagrant disregard of existing licenses, established
20 copyright law and the Regents’ and UCLA’s own intellectual property policies.

23 4. To accomplish this unlawful activity, upon information and belief, the
24 Defendants utilize Video Furnace, a system manufactured and sold by Hai Vision
25 Systems, Inc. (“HVS”). Video Furnace allows for the unauthorized recording of DVD
26 content, its long-term storage and then its transmission and distribution to computers
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1 and set top boxes. Upon information and belief, Video Furnace includes sophisticated
2 editing capabilities, which enable system administrators, including UCLA faculty, to
3 trim content, merge content from multiple sources, add text/metadata to the streamed
4 content and bookmark data (so that a user can view programs non-sequentially,
5 quickly browsing to specific reference points within a program), as well as store
6 additional copies of edited programs in separate files.
7
8

9 5. According to HVS 2009 publicity, UCLA collaborated with HVS in the design of
10 Video Furnace for use by educational institutions and lent its name and reputation to
11 the marketing efforts of HVS. UCLA thereby participated in the development and
12 trafficking of technology, device, service, device, components or parts thereof, which
13 are capable of facilitating violations throughout the United States of the copyright
14 rights of AVP and other AIME members, who license programs to other institutions
15 that acquired Video Furnace.
16
17

18 6. As background to the dispute, upon information and belief, some time around
19 January 2006, UCLA's Instructional Media Collections & Services ("IMCS"), which
20 is directly managed and/or supervised by Defendants Dr. Farb, Mr. Loehner and Ms.
21 O'Donnell, and supervised by the other Defendants, acquired HVS's Video Furnace
22 system. With the Video Furnace system, the Defendants began copying programs
23 owned by AVP and licensed to UCLA on a limited license basis, and transmitting
24 them on the University's web-based intranet. In particular, IMCS illegally exploited
25 AVP programs, "The Plays of William Shakespeare," in DVD format ("AVP
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1 Shakespeare DVDs”). “The Plays of William Shakespeare” were originally produced
2 by the British Broadcasting Company (“BBC”) and Time Life Films, Inc. (“Time”).

3 As a result of the production agreement between BBC and Time, Time acquired
4
5 exclusive rights to programs in the United States. Subsequently, Time assigned all its
6
7 rights in these programs to AVP. In 2001, AVP created the AVP Shakespeare DVDs.
8
9 At all times relevant herein, AVP held and holds on an exclusive basis in the United
10
11 States all relevant copyright rights pertaining to the AVP Shakespeare DVDs.

12 7. Upon information and belief, utilizing the Video Furnace system, copies of the
13
14 AVP Shakespeare DVDs were made directly by or under the direction of Defendants
15
16 Mr. Loeher, Dr. Farb, Ms. O’Donnell, and/or UCLA faculty members and IT
17
18 personnel, and with the authorization of Dr. Block. Said copies were then stored on
19
20 course web pages for extended periods of time and converted to digital files, which
21
22 could be distributed to multiple persons at the same time by a process called
23
24 streaming.

25 8. UCLA told AVP that over a five-year period at least 13 AVP Shakespeare
26
27 DVDs were copied and exploited more than 130 times by an unspecified number of
28
students and faculty. Upon information and belief, the AVP Shakespeare DVDs can
be viewed either by system users through the UCLA network, inside or outside an
educational setting, inside or outside the United States; that is, wherever the user may
be. Moreover, the Video Furnace system allows administrators to invite guest visitors

1 to view the contents of the AVP Shakespeare DVDs without signing in with a
2 username and password. *See Exhibit 2.*

3
4 9. AVP learned about the streaming practice in 2009. Through AIME, AVP
5 approached Dr. Block and objected to the practice. AIME explained that UCLA's
6 streaming practice violated established copyright law. AVP also explained that
7 streaming was an express violation of the AVP Shakespeare DVD license.

8
9 10. Prior to 2009, AVP had anticipated the need of educational institutions for
10 streaming media. At substantial effort and expense, AVP developed and currently
11 offers educators Ambrose 2.0, high-quality, reasonably-priced institutional streaming
12 licenses that would enable UCLA to make AVP programs available lawfully. In fact,
13 Ms. O'Donnell acknowledged to Allen Dohra, AVP Vice President-Sales and
14 President of AIME Board of Directors, that she was aware of Ambrose 2.0 and that it
15 offered a superior video product. However, she declined to acquire the AVP
16 streaming license, indicating that UCLA would continue to rely on the lesser quality
17 streams it already had digitized for no fee to AVP, notwithstanding that such a
18 practice was in flagrant violation of the AVP DVD License.

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21
22 11. Upon information and belief, the UCLA streams are not in compliance with
23 federal disability laws, which require Closed Captions, nor in compliance with UC's
24 Electronic Communications Policy regarding accessibility (*see Par. 23, infra*).

25
26 Ambrose 2.0 is in full compliance with federal disability law requirements. To the
27
28

1 extent that AVP is identified as the source of the UCLA streams that are not in
2 compliance with federal disability laws, AVP's reputation is harmed.

3 12. Despite AIME's direct overtures to Dr. Block, UCLA was unrelenting.

4
5 Initially, UCLA claimed absolute entitlement pursuant to two provisions of copyright
6 law: 17 U.S.C. §110(1) (the public performance exemption for "face-to-face"
7 teaching) and 17 U.S.C. §107 (fair use). It later added reliance upon 17 U.S.C.
8 §110(2) (the public performance exemption for certain digital distance learning uses).

9
10 13. After AVP and AIME confronted Dr. Block with the prospect of a legal
11 challenge to these theories, upon information and belief, UCLA temporarily desisted.
12
13 After a winter-break period of reflection, Dr. Block, through his legal counsel, notified
14 AVP that UCLA had the right to copy the AVP DVDs and to stream the content, so
15 the practice would continue unabated. Upon information and belief, the practice
16 continues to this day and will continue in the future unless enjoined.

17
18 14. If UCLA and other educational institutions are allowed to license DVDs from
19 AVP and other AIME members for exhibition to live audiences and then copy, edit
20 the content of the DVDs, and distribute them via the Internet to faculty, students and
21 guests without a license and without compensation to the creators, then existing and
22 new markets for AVP's and other AIME member's pre-existing works will be unfairly
23 preempted and the educational video business of AVP and other AIME members will
24 suffer greatly.
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1 15. Thus, this legal dispute is rooted in a) the Defendants' failure to comply with
2 unambiguous provisions of the license pursuant to which the AVP Shakespeare DVDs
3 were licensed to UCLA and b) UCLA's and the Regents' video streaming practices, as
4 implemented by and through the other Defendants and after notice that these actions
5 were illegal and in violation of express contractual terms and conditions.
6

7 16. This case is about ensuring that the balance struck in copyright law is properly
8 respected and not abused. This case is also about the fair adherence to contractual
9 agreements between the Defendants and AVP and other AIME members, who license
10 use of their programs.
11

12 PARTIES AND THEIR STANDING

13
14 17. AVP is a New York corporation, whose principal business is the creation and
15 distribution of high quality video content for the educational marketplace. At all
16 times pertinent to the infringements by the Defendants, AVP held and holds all
17 exclusive rights to all the AVP Shakespeare DVDs in the United States, having
18 acquired those rights from BBC and Time. Works that the Defendants have copied,
19 publicly distributed, publicly performed, publicly displayed and created derivative
20 works from in violation of AVP rights are registered with the U.S. Copyright Office in
21 the name of AVP. AVP licenses its video programs to many schools and colleges
22 throughout the United States, including the State of California and UCLA.
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24

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26 18. AIME is an Illinois non-profit membership organization offering copyright
27 information and support to teachers, librarians, media center directors, producers and
28

1 distributors of informational film, video, interactive technologies, computer software
2 and equipment. AIME's mission is to promote fair and appropriate use of the media
3 and equipment delivering information in a rapidly changing world. AIME asserts
4 standing to sue in this proceeding as an associational Plaintiff seeking prospective
5 injunctive relief on behalf of its members. AIME does not seek to remedy any
6 copyright infringement claim that any member may have against the Defendants;
7 however, AIME asserts standing because: (1) its members who hold the necessary
8 exclusive rights to their programs have standing to sue on their own for infringement
9 of copyrights and (2) the copyright interests that AIME seeks to protect are germane
10 to AIME's purpose. Moreover, neither the claims asserted by AIME, nor the narrow
11 and tailored declaratory relief requested by AIME, requires the participation of
12 individual members in the lawsuit. AIME only seeks a declaratory ruling that
13 prohibits the Defendants from prospectively infringing the copyrighted works of
14 AIME members who hold all relevant exclusive rights to licensed DVDs, and that
15 prevents unlicensed exploitation of such DVDs without their consent. To reiterate,
16 AIME is seeking prospective declaratory or injunctive relief only, not monetary
17 damages or other remedies.

18 19. AIME also has a personal stake in the outcome of this litigation, suffering
19 injury in fact. It has had to focus its attention and resources on addressing the
20 Defendants' infringements of AVP's copyrighted works and the potential
21 infringement of the copyrighted works of other AIME members. AIME members

1 whose works have been digitized and streamed by Defendants include: AVP (37
2 titles), Bullfrog Films (10 titles), California Newsreel (32 titles), Direct Cinema (9
3 titles), Insight Media (2 titles), New Day Films (12 titles) and PBS Video (56 titles).
4
5 *See* Exhibit 3. AIME has been forced to spend much of its limited resources and staff
6 time directly confronting the problem created by the Defendants for the educational
7 video publishers, who are AIME's members and whose membership AIME seeks to
8 maintain.
9

10 20. As a direct result of Defendants' activities, AIME has been forced to limit its
11 provision of copyright advice and information to members. Response time for
12 answers to members' copyright questions has been slowed, its reputation as a valuable
13 copyright resource organization has been tarnished, and staff time has been consumed
14 with these legal issues instead of building additional copyright resources for members.
15
16 These consequences have made AIME less valuable to its members, some of whom
17 have left the organization. Further, AIME lost a major opportunity to market itself to
18 potential new members when, as a direct result of this matter, the board of directors of
19 a national media conference cancelled a cooperative meeting on copyright in the fall
20 of 2010. Filmmakers, distributors, educators from K-12, colleges, universities and
21 public librarians would have been the targeted audience for the meeting, and all could
22 have been potential members of AIME. If AIME is unsuccessful in enjoining the way
23 in which the Defendants' exploit educational videos of AIME members, then its
24 mission will have been materially, if not unalterably, frustrated.
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1 21. The Regents is a corporation incorporated under the laws of the State of
2 California, and its power derives from Article IX, Section 9 of the California
3 Constitution. According to its Bylaws, namely Bylaw 5.1(a), the Regents has “full
4 powers of organization and government” subject only to limited legislative control.
5 The Regents is made up of a 26 member board and two nonvoting faculty members.
6 The Regents administers the University of California educational system (sometimes
7 herein “UC”) as a public trust, of which UCLA is a member. The present membership
8 of The Regents includes the following individuals: 1) Appointed Regents: Richard C.
9 Blum, David Crane, William De La Pena, Russell Gould, Eddie Island, Odessa
10 Johnson, George Kieffer, Sherry L. Lansing, Monica Lozano, Hadi Makarechian,
11 George M. Marcus, Alfredo Mireles, Jr., Norman J. Pattiz, Bonnie Reiss, Frederick
12 Ruiz, Leslie Tang Schilling, Bruce D. Varner, Paul Wachter and Charlene Zettlel; 2)
13 Ex Officio Regents: Jerry Brown, Gavin Newsom, John A. Perez, Tom Torlakson,
14 Mark G. Yudof, Bruce Hallet and Lori Pelliccioni; and 3) Faculty Representatives:
15 Robert Anderson and Robert Powell.
16

17 22. Mark G. Yudof (“Mr. Yudof”) is President of the Regents. Pursuant to
18 Regents’ Standing Order 100.4(mm), the President of the Regents “is authorized to
19 develop and implement policies and procedures on matters pertaining to intellectual
20 property, including ... copyrights ... and to execute documents necessary for the
21 administration of intellectual property, including those which may contain
22 commitments existing longer than seven years. The President annually shall report to
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1 the Board on matters pertaining to intellectual property.”

2 www.universityofcalifornia.edu/regents/bylaws/so1004.html.

3 23. Over the past 25 years, the Regents have adopted and promulgated copyright
4 policies for the entire University of California education system. Principal
5 promulgations of these policies, rules, and criteria are attached hereto as Exhibit 4.
6 Among these policies, rules, orders and criteria, which remain in place today and are
7 enforced by Mr. Yudof, are the following:
8

9 a) The mandate that the University of California “uphold copyright law,”

10 www.universityofcalifornia.edu/copyright/usingcopyrightworks.html;

11 b) The commitment of the entire UC Community to compliance with applicable
12 intellectual property law, specifically including copyright law. (“The University of
13 California is committed to upholding U.S. copyright law.”)

14 www.ucop.edu/irc/policy/copycommit.html);

15 c) The policy that deems it “vital that *the University of California faculty,*
16 *students, and staff [to] understand and responsibly exercise rights accorded them*
17 *under the copyright law,* particularly now in light of new technologies and laws that
18 challenge long-standing educational and library exemptions and interpretations.”

19 www.universityofcalifornia.edu/copyright/ (emphasis supplied); and

20 d) The University of California Electronic Communications Policy (ECP) that
21 provides:
22

23 **II. GENERAL PROVISIONS**
24

1 **E. VIOLATIONS OF LAW AND POLICY**

2 **1. Law.** Federal and state law prohibit the theft or abuse of computers and
3 other electronic resources such as electronic communications resources,
4 systems, and services. Abuses include (but are not limited to) unauthorized
5 entry, use, transfer, tampering with the communications of others, and
6 interference with the work of others and with the operation of electronic
7 communications resources, systems, and services. The law classifies certain
8 types of offenses as felonies (see Appendix B, Reference).

9 **2. University Disciplinary Actions.** University policy prohibits the use of
10 University property for illegal purposes and for purposes not in support of
11 the mission of the University. In addition to legal sanctions, violators of this
12 Policy may be subject to disciplinary action up to and including dismissal or
13 expulsion, pursuant to University policies and collective bargaining
14 agreements. ...

15 **III. ALLOWABLE USE**

16 **D. Allowable Use**

17 Use of University electronic communications resources is allowable subject
18 to the following conditions: ...

19 **9. Accessibility.** All electronic communications intended to accomplish
20 academic and administrative tasks of the University shall be accessible to
21 allowable users with disabilities in compliance with law and University
22 policies. ...

23 **10. Intellectual Property.** *The contents of all electronic communications
24 shall conform to laws and University policies regarding protection of
25 intellectual property, including laws and policies regarding copyright,
26 patents, and trademarks. When the content and distribution of an electronic
27 communication would exceed fair use as defined by the federal Copyright
28 Act of 1976, users of University electronic communications resources shall
29 secure appropriate permission to distribute protected material in any form,
30 including text, photographic images, audio, video, graphic illustrations, and
31 computer software. ...*

32 **E. ACCESS RESTRICTION**

33 ... *In compliance with the Digital Millennium Copyright Act, the University
34 reserves the right to suspend or terminate use of University electronic
35 systems and services by any user who repeatedly violates copyright law.
36 www.ucop.edu/ucophome/coordrev/policy/PP081805ECP.pdf. Emphasis
37 supplied.*

1 24. Since 1978, UC has applied for 1,762 copyright registrations with the United
2 States Copyright Office. See Exhibit 5.

3 25. In addition to the UC system policy, rules and orders, UCLA has issued
4 copyright policy statements and guidelines that commit UCLA to compliance with
5 copyright law. In particular, with respect to audiovisual materials, UCLA copyright
6 policy states:
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9 *Audiovisual materials copied in a different format: Copying audiovisual*
10 *material when change of format results is permitted when the conditions*
11 *for replacement copying or preservation copying are met or when*
12 *permission to change the format is granted by the publisher.*
13 www.library.ucla.edu/copyright/2141.cfm (emphasis supplied).

14 *Streaming requires a change in format and the compression of digital files.*

15 *Therefore, UCLA policy requires employees to seek and secure consent of owners of*
16 *programming, including AVP, which consent all Defendants in their official and*
17 *individual capacities failed to seek and secure, thus violating UCLA copyright policy.*

18 UCLA has also issued the following warnings concerning copyright restrictions:

19
20 1) The copyright law of the United States (Title 17, United States Code)
21 governs the making of photocopies of other reproductions of
22 copyrighted materials....This institution reserves the right to refuse to
23 accept a copying order if, in its judgment, fulfillment of the order
24 would involve violation of Copyright Law.
25 www.library.ucla.edu/copyright/2135.cfm.

26 2) If electronic transmission of reserve material is used for purposes in
27 excess of what constitutes "fair use," that user may be liable for
28 copyright infringement. www.library.ucla.edu/copyright/2131.cfm.

Exhibit 6.

1 26. Collectively, the UC and UCLA orders, policies, and actions go well beyond
2 merely discouraging copyright infringement; rather, they constitute an affirmative
3 public commitment to “upholding the [copyright] law.” As a result, these orders,
4 policies and actions have brought the UC system, including all the Defendants, in their
5 official and individual capacities, within the federal copyright system.
6

7 27. Moreover, the Defendants, including Mr. Yudof, Dr. Block, Dr. Farb, Mr. Loehner
8 and Ms. O’Donnell, in their individual capacities, by virtue of UCLA’s agreement to
9 the terms and conditions set forth in the 2006-2007 AVP License for the AVP
10 Shakespeare DVDs (the “2006-2007 AVP License”) (Exhibit 7) and the terms and
11 conditions set forth in the 2008-2011 AVP License for other DVDs licensed by UCLA
12 (the “2008-2011 AVP License”) (Exhibit 8) (collectively, the 2006-2007 AVP
13 License and the 2008-2011 AVP License, the “AVP Licenses”), are obligated to
14 comply with the terms and conditions of the AVP Licenses and not to engage in the
15 practices complained of herein.
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19 28. Moreover, with respect to Defendants UCLA, UC and the other Defendants in
20 their official capacity, any claim to sovereign immunity is expressly waived by the
21 2008-2011 AVP License, which contains a governing law provision, which provides
22 in pertinent part: “Licensee hereby consents to the jurisdiction of the state and federal
23 courts located in New York, New York.”
24

25 29. Pursuant to Standing Order 100.6 of the Regents, Dr. Block is “the chief
26 campus officer thereof and shall be the executive head of all activities on that campus
27
28

1 [t]he Chancellor shall be responsible for the organization and operation of the
2 campus, its internal administration, and its discipline; and decisions made by the
3 Chancellor in accordance with the provisions of the budget and with policies
4 established by the Board or the President of the University shall be final.” Exhibit 4.
5

6 As the chief campus officer, Dr. Block received correspondence from AVP and
7 AIME. Upon information and belief, he authorized or approved the UCLA streaming
8 practices that constitute copyright infringement.
9

10 30. Dr. Farb is the individual responsible for overseeing the activities of the UCLA
11 library system in connection with digital collections management and licensing and
12 copyright management issues.
13

14 31. Mr. Loehner, in his role as Director of the Office of Instructional Development,
15 is responsible for directly supervising Ms. O’Donnell and ensuring that her conduct is
16 consistent with UCLA’s objectives and legal policy.
17

18 32. Ms. O’Donnell presides over the IMCS, which is UCLA’s primary resource for
19 acquiring educational films, videos and DVDs and for advising faculty members
20 respecting the classroom use of such media.
21

22 33. John Does 1-50 are persons presently unknown to Plaintiffs, who either
23 contributed to the infringements of the AVP Shakespeare DVDs, or who have
24 replaced or will replace the particular individuals identified herein and who thus need
25 to come within the terms of any prospective injunction.
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1 34. The Regents, who are identified in Paragraph 21 hereinabove, Dr. Block, Mr.
2 Yudof, Dr. Farb, Mr. Loeher and Ms. O'Donnell are also sued in their individual
3 capacities for directly infringing or contributing to the infringements of AVP's
4 copyrights and violations of AVP's licenses.
5

6 JURISDICTION AND VENUE

7 35. This is a civil action for breach of contract, breach of covenants of good faith
8 and fair dealing, anticipatory breach of contract, deprivation of property without due
9 process of law, unjust enrichment and tortious interference with contracts and with
10 business relationships under common law, and violation of the Copyright Act of
11 1976, as amended, 17 U.S.C. §101, *et. seq.* and for declaratory relief.
12
13

14 36. The Court has personal jurisdiction over the Regents as a corporation
15 incorporated under the laws of California, and over the individual Regents identified
16 in Paragraph 21 hereinabove, Dr. Block, Dr. Farb, Mr. Loeher and Ms. O'Donnell and
17 John Does 1-50, as individuals residing in the State of California.
18

19 37. This Court has subject matter jurisdiction to hear Plaintiff's copyright
20 infringement claim under 17 U.S.C. §101 *et seq.*; 28 U.S.C. §§ 1331 and 1338; and to
21 hear Plaintiffs' other claims under 28 U.S.C. 1332(a) as there exists diversity of
22 citizenship among the parties hereto and the amount in controversy exceeds the sum
23 of \$75,000; supplemental jurisdiction to hear all other claims under 28 U.S.C. §1367;
24 and jurisdiction over declaratory relief requested under 28 U.S.C. §§2201(a) and
25 2202. Venue is proper under 28 U.S.C. §1391(b) and 28 U.S.C. §1400(a).
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FACTS

I. DEFENDANTS INFRINGED AMBROSE'S COPYRIGHTS FOR THE AVP SHAKESPEARE DVDS AND BREACHED THE AVP LICENSES

A. The AVP Educational DVD Offerings

38. For more than twenty years, AVP has produced and distributed high quality programs in science, history and drama. Not only has AVP produced award winning programs, but also it has acquired works from third parties, such as the BBC, Discovery Channel and independent producers pursuant to license agreements providing for royalty payments and containing other terms and conditions. AVP programs are licensed to educational institutions in all digital formats. DVDs have been available since the year 2000 and Mpeg files in other formats have been available since 2002. Individual professors and students, as well as institutions, purchase the DVDs.

39. Many AVP titles feature supplemental educational content, such as concept clips, closed captioning, Spanish subtitles, research guides, maps, timelines, and historical documents using computer graphics, all to enrich the learning experience for students and teachers. Exhibit 9 is the Ambrose Educational DVD Catalog 2009-2010.

40. In addition to licensing programs for classrooms and libraries, a number of years ago, AVP made a substantial investment to create Ambrose Video 2.0, a download program and video streaming website (located at www.ambrosedigital.com)

1 that allows educational clients to access more easily the AVP catalog in a number of
2 digital formats. Given the ever-growing needs of educational institutions to provide
3 varied and flexible content delivery systems for its faculty and student body, Ambrose
4 Video 2.0 has become one of AVP's primary delivery options for educational
5 offerings. To initiate Ambrose Video 2.0, older video programs, along with newer
6 ones, had to be encoded, captioned and stored. Then, the technological system to
7 enable efficient real-time delivery had to be developed and implemented. Ambrose
8 Video 2.0 puts AVP at the forefront of educational video publishers who strive to
9 serve the growing needs and interests of the educational community. Exhibit 10
10 consists of pages from the Ambrose Educational DVD Catalog providing further
11 detail on Ambrose Video 2.0.

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15 41. To meet its contractual obligations to program producers and its own financial
16 needs, AVP has established terms and conditions that control the use of DVD
17 programs. It licenses schools and universities, including UCLA, the right to use
18 copyrighted programs available in DVD format as set forth in the AVP Licenses. In
19 connection with DVDs that AVP has licensed to UCLA since 2006, there are two
20 relevant AVP licenses.
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23 42. The terms applicable to Defendants' use of the AVP Shakespeare DVDs are set
24 forth in the 2006-2007 AVP License. In addition to all "The Plays of William
25 Shakespeare," acquired by UCLA in 2006, UCLA also acquired the "Childhood Set"
26 DVD series in 2007, and the terms applicable to the "Childhood Set" DVDs are also
27
28

1 set forth in the 2006-2007 AVP License. The 2006-2007 AVP License, set forth in
2 Exhibit 7, provides in pertinent part:

3 **1. License:** Ambrose grants Customer and Customer accepts from Ambrose
4 the limited license under copyright to exhibit one or more of the films, video
5 and/or sound filmstrip programs or both ordered or rented by Customer
6 (hereinafter called "Programs"), but only for exhibition to non-paying private
7 audiences during the period set forth and in accordance with the specific terms
8 of said order or rental....

9 CUSTOMER ACKNOWLEDGES THAT THE PROGRAMS MAY NOT BE
10 DUPLICATED, BROADCAST, TRANSMITTED BY CABLE OR
11 OTHERWISE, ON ANY MULTI-RECEIVER OPEN OR INTERNET
12 SYSTEM, OR DISPLAYED BEFORE THE PUBLIC, WHETHER OR NOT
13 ADMISSION IS CHARGED...

14 Customer shall not ... part with possession of any Program received by
15 Customer hereunder. ... Nothing herein shall derogate from any rights of
16 Ambrose or any other copyright proprietor of any Program under the United
17 States Copyright Law....

18 **7. Cuts:** Customer shall exhibit each Program only in its entirety and shall not
19 copy, duplicate, sublicense or sublease or part with possession thereof.
20 Customer shall not cut or alter any Program or otherwise edit therewith, and in
21 no event shall any Program be performed or exhibited without complete
22 copyright notices and credits contained thereof.

23 43. In addition to the AVP Shakespeare DVDs and the Childhood Set DVDs,
24 UCLA also licensed another AVP DVD series entitled "Long Search" in 2009. The
25 terms of the license applicable to these DVDs are set forth in the 2008-2011 AVP
26 License, set forth on the AVP's website at <http://www.ambrosevideo.com/order.cfm>.
27 Exhibit 8.

28 44. The 2008-2011 AVP License provides in pertinent part:

1 **1. Grant of License:** AVP grants to the Licensee a limited, non-exclusive,
2 revocable license to use the Content (as defined below) in an educational OR
3 home video setting.

4 **CUSTOMER ACKNOWLEDGES THAT THE PROGRAMS MAY NOT**
5 **BE DUPLICATED, BROADCAST, TRANSMITTED BY CABLE OR**
6 **OTHERWISE, ON ANY MULTI-RECEIVER OPEN OR INTERNET**
7 **SYSTEM, OR DISPLAYED BEFORE THE PUBLIC, WHETHER OR**
8 **NOT ADMISSION IS CHARGED. CUSTOMER SHALL EXHIBIT THE**
9 **PROGRAMS ONLY AS HEREIN SPECIFIED AND USE THE**
10 **PROGRAMS FOR NO OTHER PURPOSE.**

11 Customer shall not sublicense, sublease or part with possession of any Program
12 received by Customer hereunder. Performing rights to music contained in any
13 Program are not granted herein. Nothing herein shall derogate from any rights
14 of Ambrose or any other copyright proprietor of any Program under the United
15 States Copyright Law or any applicable foreign copyright laws. The Content is
16 licensed solely for classroom teaching, research, educational non-commercial
17 multimedia projects, classroom presentations, and individual presentations for
18 use in educational institutions or public libraries.

19 PUBLIC PERFORMANCE RIGHTS

20 A “public performance” is any performance of a videocassette, DVD, videodisc
21 or film which occurs outside of the home, or at any place where people are
22 gathered who are not family members, such as in a school or library. In most
23 cases titles sold by video and retail outlets are restricted to home use only and
24 do not include public performance rights. All of the prices listed on the
25 individual film pages include public performance rights.

26 EDUCATIONAL TELEVISION

27 Television rights for cable, commercial, educational television, or internet/web
28 television are specifically NOT included with purchase and are covered by a
29 licensing agreement. Contact Ambrose Video for more information.

30 See pricing for Educational Television.

31 45. Both AVP Licenses provide that in the event of default AVP has the right to
32 terminate the license “in addition to and without prejudice to any right or remedy in

1 law or equity or provided for elsewhere in this agreement on account of any violation
2 or breach.”

3 *B. Streaming of AVP Shakespeare DVDs*

4
5 46. While UCLA’s exhibition of AVP Shakespeare DVDs is subject to the 2006-
6 2007 AVP License, AVP also offers educational institutions the ability to acquire
7 streaming rights to programs via Ambrose Video 2.0.

8
9 47. “Streaming” is the process whereby content is a) copied to conform to the
10 format of a transmitting unit, b) publicly distributed in compressed form over the
11 Internet, c) copied onto the user’s computer and d) then publicly performed and
12 publicly displayed by a viewer. When received by the user, the user does not have to
13 wait to download an entire program to begin viewing; rather, the compressed data is
14 decompressed and transmitted from a temporary file on the user’s computer to a video
15 display as a continuous “stream” of video files.
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18 48. To produce the stream, the source needs a device that copies, conforms the
19 work to a usable digital format and distributes it. To see the streamed content, the
20 viewer needs a player, which is a special program that receives (copies) the files,
21 decompresses the content, and sends video data to the display screen and audio data to
22 the speakers.
23

24
25 49. HVS’s Video Furnace is a system for recording, editing and distributing video
26 content. Exhibit 11. Once content is copied onto the Video Furnace system, it may be
27 distributed via a link on a customizable web portal where it can be accessed by a user
28

1 through HVS's "InStream" player. Exhibit 12. HVS' Video Furnace includes editing
2 capabilities, which enable an administrator (*e.g.*, a faculty member) to trim content,
3 merge content from multiple sources, add text/metadata to the streamed content and
4 bookmark data so that a user (*e.g.*, a student) can quickly browse to specific reference
5 points within a program. *See* Exhibit 13.
6

7 50. The process of utilizing the Video Furnace system implicates all the exclusive
8 copyright rights of educational video publishers and exclusive distributors like AVP,
9 including the right to reproduce or copy a work, the right to create a derivative work,
10 the right to publicly perform a work, the right to publicly distribute a work and the
11 right to publicly display a work. 17 U.S.C. §106.
12

13 51. The copyright owner's exclusive right to reproduce the work in copies is
14 violated because, upon information and belief, in order to upload an AVP DVD into
15 Video Furnace, the web administrator must create a copy of the DVD, which has been
16 reformatted for use by the HVS Video Furnace system. This reformatting of the DVD
17 violates UCLA's policy if consent of a copyright owner has not been secured. *See*
18 ¶25 *supra*. AVP, which is the beneficiary of the UCLA policy, has the right to expect
19 that such policy will be followed by the Defendants. The reformatted copy remains
20 fixed on the Video Furnace system until deleted by the administrator or until a
21 specified end date is reached (*i.e.*, for more than a transitory duration). Moreover,
22 upon information and belief, additional copies can be made and stored by each
23 authorized faculty member who uses Video Furnace to individualize content for his or
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1 her class by editing, adding text, etc. *See* Exhibit 13. Finally, the HVS Furnace
2 delivers or distributes video content to all users. Copies of the video reside on the
3 user's computer as long as an InStream viewing session is open. *See* Exhibit 12.

4
5 52. The copyright owner's exclusive right to make derivative works is violated
6 because, upon information and belief: (1) Video Furnace allows the web administrator
7 to trim content, merge content from multiple DVDs, add text/metadata to the streamed
8 content and bookmark data so that a user can quickly browse to specific reference
9 points within a program (*see* Exhibit 13); and (2) UCLA instructors may request to
10 have videos encoded and linked to their course webpage via the Video Furnace
11 system. *See* Exhibit 14. Upon information and belief, once encoded videos are linked,
12 instructors can prepare a derivative work, which can be separately stored, thereby
13 creating multiple infringing copies.
14

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16
17 53. The copyright owner's exclusive right to distribute the work is violated
18 because, upon information and belief, the Video Furnace system administrator retains
19 an original copy of the AVP DVD while distributing copies to end users, which copies
20 remain on the end user's computer as long as the Video Furnace InStream player
21 remains open. *See* Exhibit 12. HVS' Administration Guide describes the Video
22 Furnace System as a "simple-to-deploy system for encoding and distributing" video.
23
24 *See* Exhibit 11.

25
26 54. The copyright owner's exclusive right to publicly display the work is violated
27 because, upon information and belief: the Video Furnace technology permits faculty
28

1 to edit and store videos so that images in videos displayed on student computers can
2 be displayed non-sequentially. *See* Exhibits 13 and 14.

3 55. The copyright owner's exclusive right to publicly perform the work is violated
4 because UCLA's streaming activities exceeded the scope of the AVP Licenses.
5 Specifically the 2006-2007 Licenses covering the AVP Shakespeare DVDs expressly
6 prohibit transmission on any multi-receiver open or Internet system, such as the
7 UCLA Intranet. Further, the 2006-2007 Licenses covering the AVP Shakespeare
8 DVDs only grant a limited license to UCLA to exhibit the DVDs to non-paying
9 private audiences and without any cuts, alterations or edits, which UCLA's use of
10 HSV's Video Furnace system permits..

11 56. Upon information and belief, a viewer of the DVDs streamed by UCLA does
12 not have to be in an educational setting; for example, the student with access to the
13 UCLA network can be in a WiFi hot spot anywhere, such as at Starbucks coffee shops
14 off campus and, upon information and belief, the viewer does not even have to be in
15 the United States. Publicly performing AVP Shakespeare DVDs outside the United
16 States exceeds the exclusive license granted to AVP by the BBC. Further, upon
17 information and belief, the viewer does not have to be an enrolled student because,
18 through the Video Furnace's "Guest Permissions" feature, an administrator may
19 choose to allow any individual--student or non-student-- to view the AVP DVDs
20 without a username or password. *See* Exhibit 2. Such uses of the AVP DVDs are in
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1 violation of the 2008-2011 AVP License, which restricts UCLA's use to educational
2 or home video settings.

3 57. Upon information and belief, when the AVP Shakespeare DVDs are streamed,
4 there is no guarantee that viewers will see them in their entirety. In fact, upon
5 information and belief, by use of Video Furnace, Defendants permit instructors to link
6 clips of films to the Video Furnace portal. Such a use of the AVP DVDs would be in
7 direct violation of the 2006-2007 AVP License, which requires that each program be
8 exhibited "only in its entirety" with "complete copyright notices and credits."
9

10 58. As noted, Ambrose Video 2.0 is an affordable video streaming option offered
11 for individuals and all kinds of educational institutions, from home schoolers to
12 research institutions of higher education. Ambrose Video 2.0 has been designed to
13 ensure not only that its programs are made available for use with the newest
14 technological innovations, but also that these uses are consistent with the rights and
15 obligations that AVP owes third parties, like the BBC, music authors, screenwriters,
16 photographers and others whose works are distributed or incorporated into AVP
17 programs. Ambrose Video 2.0 thus incorporates Digital Rights Management
18 ("DRM"), or technological measures designed to control access to and copying of the
19 DVDs.
20

21 59. The pricing of AVP streaming rights to video programs is tailored to every
22 institutional need. For example, a license for an unlimited simultaneous stream of the
23 AVP Shakespeare DVD "Measure for Measure," with closed captioning to all students
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1 and faculty served by the UCLA Los Angeles campus for one year can be acquired for
2 \$24.99. AVP bundles up to 50 hours of programming for \$889.00. *See* Exhibit 9.

3 Lower priced options are available for home schools and individual teachers.
4

5 *C. UCLA's Breach of Contract and Copyright Infringements*
6

7 60. Pursuant to the 2006-2007 AVP License, UCLA licensed (a) AVP Shakespeare
8 DVDs consisting of 37 DVDs, the entire series, "The Plays of William Shakespeare"
9 in 2006; and (b) "Childhood Set" in 2007. The AVP Shakespeare DVDs are among
10 AVP's most popular offerings. Pursuant to the 2008-2011 AVP License, UCLA
11 acquired AVP's DVD series "Long Search." AVP holds all pertinent exclusive
12 copyright rights to all these works in the United States.
13

14 61. Given the license restrictions on streaming AVP videos and the reasonableness
15 of the Ambrose Video 2.0 streaming license, it came as a rude shock when AVP
16 learned that IMCS had been streaming AVP programs for years without prior request,
17 approval, or any effort on their part to ascertain whether such a license was deemed
18 necessary or available.
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22 62. At the time of this infringement discovery and aware that UCLA's actions
23 could affect many other, similarly-situated educational video publishers, AVP enlisted
24 the support of AIME. On May 19, 2009, Betty G. Ehlinger, Executive Director of
25 AIME, wrote Ross Bollens, Director of Information Technology Security of UCLA's
26 Office of Information Technology, regarding the revelation by Ms. O'Donnell that she
27
28

1 had been utilizing Video Furnace to copy, digitize and stream AVP Shakespeare
2 DVDs for many years. Exhibit 15. Writing on behalf of AVP, Ms. Ehlinger advised
3 Mr. Bollens that this practice violated copyright law and sought an accounting of the
4 activities and assurance of future compliance with licenses and the law.
5

6 63. Mr. Bollens did not respond, so on June 18, 2009, Ms. Ehlinger wrote to Dr.
7 Block. Exhibit 16. On July 24, 2009, L. Amy Blum, Senior Campus Counsel in the
8 Office of the Chancellor, responded to both of Ms. Ehlinger's letters. Exhibit 17. In
9 her response, Ms. Blum set forth legal defenses for UCLA's digitizing and streaming
10 practices, citing Sections 107 and 110(1) of the Copyright Act. 17 U.S.C. §§107 and
11 110(1).
12
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14 64. On September 16, 2009, Arnold P. Lutzker, Counsel for AIME, replied to Ms.
15 Blum's analysis, in which he contested both prongs of UCLA's defense, indicating
16 that neither Section 107 nor Section 110(1) authorized or allowed the UCLA
17 practices. Exhibit 18. Mr. Lutzker urged that the parties should meet to see if a
18 resolution of the dispute was feasible, but that before such meeting, UCLA should
19 provide more details regarding digitizing and streaming of AIME member programs.
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22 65. On October 21, 2009, UCLA responded, indicating that it would meet with
23 AIME and that IMCS would temporarily stop streaming content outside the Library
24 commencing December 20, 2009. Exhibit 19. In her response, Ms. Blum sought to
25 narrow UCLA's liability, but that suggestion was rejected by letter dated October 28,
26 2009. Exhibit 20.
27
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1 66. A meeting of the parties was held on January 19, 2010. Mr. Dohra represented
2 AVP and AIME, and Dr. Farb, Ms. O'Donnell and Mr. Loehner represented UCLA.
3 The meeting did not resolve the dispute.
4

5 67. Upon information and belief, on February 16, 2010, Defendant UCLA's
6 Information Technology Planning Board ("ITPB") and Academic Senate submitted to
7 Dr. Block and to Executive Vice Chancellor and Provost Scott Waugh a set of
8 principles on the use of streaming videos and other educational content. Exhibit 21.
9 Upon information and belief these principles were adopted at a meeting of the ITPB
10 on February 11, 2010, the agenda for which includes discussion of the AIME
11 copyright challenge,² and subsequently enforced by Dr. Block.
12

13
14 68. Upon information and belief, by public pronouncement and by letter dated
15 March 2, 2010, UCLA publicly announced and advised AVP that it would resume
16 copying and streaming DVDs from its libraries, adding Section 110(2), 17 U.S.C.
17 §110(2), as an additional justification for its practice, and indicating that it would
18 require professors to articulate a pedagogical purpose for any streaming request.
19 Exhibit 22.
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23 _____
24 ² The agenda appears at http://www.itpb.ucla.edu/meetings/Agenda2_11_2010.htm
25 (last accessed October 21, 2011). The ITPB site includes agendas, minutes and
26 documents for each ITPB meeting organized by year. The minutes for the February
27 11, 2010 meeting, however, are not posted on the site. See
28 <http://www.itpb.ucla.edu/meetings/> (last accessed October 21, 2011).

1 69. The letter dated March 2, 2010 from Amy Blum, Senior Campus Counsel,
2 stated that the decision to resume streaming was made after review by “the highest
3 levels of both academic and administrative leadership.” Upon information and belief,
4 this statement refers explicitly to Dr. Block (“the chief campus officer ...[i.e.] the
5 executive head of all activities on...campus [who is] responsible for the
6 organization and operation of the campus, [and] its internal administration”) and
7 possibly to Mr. Yudof (who is “authorized to develop and implement policies and
8 procedures on matters pertaining to intellectual property, including ... copyrights”).
9 Upon information and belief, this decision followed Dr. Block’s receipt of the
10 principles adopted by the ITPB at its February 11, 2010 meeting. Therefore, upon
11 information and belief, Dr. Block in his official and individual capacities contributed
12 to the infringement of the AVP DVDs by authorizing use of HVS’ Video Furnace
13 system to copy, distribute, prepare derivative works, publicly distribute, publicly
14 display and publicly perform AVP DVDs, although he knew or should have known
15 that these actions violated the AVP Licenses and established UCLA and UC copyright
16 policy and constituted actionable copyright infringement. Upon information and
17 belief, the other individual Defendants, in their official and individual capacities,
18 directly or contributorily infringed AVP’s copyrights.
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25 *D. UCLA’s Actions Violate the Copyright Law Including the DMCA*

26 70. Upon information and belief, the Defendants use HVS’s Video Furnace to copy,
27 prepare derivative works, publicly distribute, publicly perform and publicly display
28

1 AVP Shakespeare DVDs, all in violation of AVP's exclusive copyright rights and in
2 breach of the covenants in the 2006-2007 AVP License.

3 71. Upon information and belief, the making of copies of AVP Shakespeare DVDs
4 utilizing Video Furnace also entails the bypassing of copy-guarded codes embedded
5 within each AVP Shakespeare DVD. Copy-guarded codes are an integral part of
6 AVP's DRM system, or technological measures that AVP employs to prevent
7 unauthorized access, copying and use of AVP Shakespeare DVDs. Such codes are a
8 key mechanism not only for implementing the license restrictions in the 2006-2007
9 AVP License, as well as the 2008-2011 AVP License, but also for assuring
10 compliance with AVP's obligations to third parties, whose programs it distributes or
11 works it incorporates within AVP DVDs.
12

13 72. Moreover, the AVP Licenses do not grant UCLA lawful access to the DVDs for
14 the purpose of use in connection with HVS' Video Furnace. Such use, the sole
15 purpose of which is to illegally copy and distribute AVP DVDs via the Internet, is
16 expressly prohibited by the AVP Licenses.
17

18 73. Upon information and belief, the circumvention of AVP's DRM constitutes
19 violations of Sections 1201(a) and (b) of the Copyright Act. 17 U.S.C. §1201(a) and
20 (b). Upon information and belief, the Defendants are liable in their individual and
21 official capacities for their actions to circumvent AVP's technological measures that
22 effectively control access to and copying of its programs.
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1 74. Upon information and belief, UCLA collaborated with HVS and a few other
2 universities, to develop higher education use of HVS's Video Furnace system, which
3 system circumvents the AVP DRM. According to statements on HVS's
4 website: "*Video Furnace was initially developed in close collaboration with a number*
5 *of leading universities including ... UCLA.*"
6
7 <http://www.haivision.com/applications/education> (accessed September 13, 2009.)
8

9 75. Upon information and belief, based on its collaboration with HVS and UCLA's
10 lending its name and reputation to the marketing efforts of HVS, Defendants have
11 acquired, used and trafficked in Video Furnace, which is a technology, product,
12 service, device, component, or part thereof, that is primarily designed or produced for
13 the purpose of circumventing the Content-Scrambling System (CSS) of AVP DVDs,
14 which is a technological measure that effectively controls access to a work protected
15 under 17 U.S.C. §1201(a). Video Furnace has only limited commercially significant
16 purposes or use other than to circumvent technological measures like CSS that
17 effectively controls access to a work protected under this title and has been marketed
18 by HVS in concert with UCLA with knowledge of its use in circumventing control
19 measures like CSS. As detailed in Exhibit 13, Video Furnace has a "simple three-step
20 approach" that allows the Defendants to digitize and publish "an asset"; *i.e.*, AVP
21 DVDs. This process involves directly bypassing CSS, which is designed to prevent
22 such digitizing and publishing of AVP Shakespeare DVDs.
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1 76. Upon information and belief, UCLA acted in concert with HVS in the
2 development of Video Furnace, with knowledge that Video Furnace can be used to
3 circumvent technological measures, like those employed by AVP on AVP
4 Shakespeare DVDs, to limit access to its copyrighted DVDs, in violation of 17 U.S.C.
5 §1201(a).
6

7 77. Upon information and belief, based on its collaboration with HVS and UCLA's
8 lending its name and reputation to the marketing efforts of HVS, Defendants have
9 trafficked in Video Furnace, a technology, product, service, device, component, or
10 part thereof, that is additionally primarily designed or produced for the purpose of
11 circumventing CSS or similar technology which effectively protects rights of a
12 copyright owner including AVP under 17 U.S.C. §1201(b). Video Furnace has only
13 limited commercially significant purpose or use other than to circumvent protection
14 afforded by a technological measures like CSS that effectively protects the rights of a
15 copyright owner like AVP under 17 U.S.C. §1201(b) and has been marketed by HVS
16 in concert with UCLA with knowledge of its use in circumventing protection
17 measures like CSS.
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22 78. Upon information and belief, UCLA acted in concert with HVS in the
23 development of Video Furnace, with knowledge that Video Furnace can be used to
24 circumvent protection measures like the copy-guard DRM employed by AVP on AVP
25 DVDs, in violation of 17 U.S.C. §1201(b). UCLA's extensive use of Video Furnace
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1 to copy and distribute thousands of videos (*see* Exhibit 3) is direct evidence of its
2 intent to assist HVS in these efforts.

3 *E. None of the Copyright Defenses Asserted by Defendants Supports Their*
4 *Infringing Actions*

5 79. AVP has registered the AVP Shakespeare DVDs exploited by UCLA with the
6 U.S. Copyright Office. Copies of the Registration Certificates for AVP Shakespeare
7 DVDs are attached hereto. Exhibit 23.

8
9 80. Contrary to the Defendants' assertions, Section 110(1), 17 U.S.C. §110(1), does
10 not sanction UCLA's copying and distribution of copies of AVP Shakespeare DVDs.
11 Section 110(1) only permits the public performance or public display of copyrighted
12 works in the course of face-to-face teaching activities of instructors and students of
13 non-profit educational institutions in classrooms or similar places of teaching.

14
15 Moreover, Section 110(1) does not exempt the copying of any work, which is done
16 each time the Defendants prepare a work for transmission using Video Furnace, nor
17 does it exempt distribution of copies of video programming from a remote location
18 (like UCLA's media center) to student computers, nor does it permit exhibition other
19 than to live audiences, or transmission to places that are not similar to classrooms,
20 such as dormitories, apartments, commercial venues where WiFi is present, or to
21 auditoriums where the audience is not confined to a particular academic class.

22
23 81. Section 110(1) also intends that viewing be simultaneous between teacher and
24 students in order for the face to face teaching exception to apply. Since, upon
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1 information and belief, the streaming activities by UCLA allow students and faculty to
2 view the copyrighted material at any time and at different times from each other, the
3 uses cannot and do not fall under Section 110(1).
4

5 82. Further, Section 110(1) only authorizes the performance of a motion picture
6 from a copy that was lawfully made. Since, upon information and belief, the
7 streaming was effectuated using unauthorized copies of AVP DVDs, including
8 unauthorized derivative work copies made by faculty utilizing Video Furnace editing
9 software- all in violation of licenses which expressly prohibit copying, transmitting
10 via the Internet, cutting, altering or editing - the use of the unlawful copy places this
11 activity outside the scope of Section 110(1).
12
13

14 83. Contrary to the Defendants' assertion, Section 110(2), 17 U.S.C. §110(2), does
15 not sanction UCLA's copying and streaming of AVP Shakespeare DVDs. Section
16 110(2), also known as The TEACH Act, is a limited exemption designed to allow use
17 of certain copyrighted materials in the context of digital distance education. Most
18 pertinent for purposes of this case is the fact that the statute excludes works, such as
19 AVP Shakespeare DVDs, which are separately marketed for licensed streaming for
20 use in classrooms as part of "mediated instructional activities" as defined under
21 copyright law. Section 110(2) expressly provides that the exception is inapplicable to
22 works "produced or marketed primarily for performance or display as part of mediated
23 instructional activities transmitted via digital networks." With the development of
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1 supplemental educational materials to support classroom use of the AVP Shakespeare
2 DVDs and Ambrose 2.0, the AVP Shakespeare DVDs qualify as such works.

3 84. Equally significant, with respect to motion pictures, the statute is very clear:
4 only “reasonable and limited portions” can be exploited, not entire programs as UCLA
5 has done. 17 U.S.C. §110(2).
6

7 85. Finally, as with Section 110(1), use of an unlawful copy voids any claim to
8 entitlement. Defendants’ making of multiple unauthorized copies utilizing Video
9 Furnace bars reliance upon the Section 110(2) limitation on liability for public
10 performance and public display.
11

12 86. Contrary to Defendants’ assertions, Section 107, 17 U.S.C. §107, does not
13 sanction Defendants’ copying, preparation of derivative works, public performance,
14 public distribution and public display of AVP Shakespeare DVDs. Section 107,
15 copyright law’s “fair use” provision, is a defense to a claim of infringement based
16 upon a factual analysis of four statutory criteria. This means that although an
17 unauthorized use or infringement has occurred, based upon an assessment of the fair
18 use criteria applied to the facts associated with the specific infringement, the use may
19 be allowed, even without the copyright owner’s consent. Since fair use requires a
20 balancing of the four criteria, no judgment can be reached without the four factors
21 being fully assessed.
22

23 87. In other words, fair use is not a blanket right to exploit AVP Shakespeare
24 DVDs; rather, the statutory limitation requires a factual evaluation based on the four
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1 criteria, applied to specific facts and specific works. Therefore, UCLA cannot simply
2 claim, as Defendants have, that fair use broadly exempts them from liability and that it
3 allows them to exploit any AVP Shakespeare DVD they choose in any manner they
4 choose. Rather, fair use requires an evaluation of the relevant facts applicable to each
5 use of each work to determine if the fair use defense is applicable.
6

7 88. In this instance, Defendants have chosen to ignore the fact that UCLA acquired
8 the AVP Shakespeare DVDs pursuant to the 2006-2007 AVP License that expressly
9 grants only a limited license to exhibit the videos to non-paying audiences, while
10 prohibiting duplication and transmission “on any multi-receiver open or internet
11 system,” and prohibiting cuts, alterations and edits.
12

13 89. Further, Defendants covenant in the AVP Licenses that “Nothing herein shall
14 derogate from any rights of Ambrose or any other copyright proprietor of any
15 Program under the United States Copyright Law or any applicable foreign copyright
16 laws.” Defendants also have a published policy that, except for purposes of
17 preservation or replacement of a damaged copy, UCLA will not change the format
18 of a DVD without the copyright owner’s consent.
19

20 90. In addition, AVP has a reasonably priced streaming license, which AVP offered
21 to UCLA indicating AVP could meet all of UCLA’s pedagogical needs. However,
22 Defendants explicitly rejected AVP’s offer because they intended to stream for free.
23 The fact that AVP Shakespeare DVDs contain DRM that is designed to control access
24 and copying, and facilitate AVP’s obligations to third parties whose works are used or
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1 distributed, was similarly ignored by the Defendants. Merely asserting that UCLA
2 qualifies for fair use does not satisfy its legal burden to prove its repeated use of each
3 AVP Shakespeare DVD is a fair use. As a result of Defendants' flagrant and repeated
4 breach of the AVP Licenses, on February 11, 2011, counsel for AVP notified UCLA
5 that it was in default under the AVP Licenses, invoked the termination provisions of
6 the AVP Licenses and demanded return of the AVP DVDs. *See* Exhibit 24. Despite
7 AVP's demand, UCLA failed to return any copies of the AVP DVDs or otherwise
8 comply with the termination provision of the AVP Licenses.
9

11 **II. THE DEFENDANTS' ACTIONS ARE THE TIP OF AN INFRINGEMENT**
12 **ICEBERG THAT AFFECTS OTHER AIME MEMBER COMPANIES AND**
13 **REQUIRES DECLARATORY RELIEF**

14 91. The Defendants' exploitations of AVP Shakespeare DVDs are the proverbial tip
15 of the iceberg. In response to a lawful request for information by AIME on behalf of
16 its members and pursuant to California Public Records Act, Cal. Gov. Code §6252, *et*
17 *seq*, the Plaintiffs received a document detailing all the programs that UCLA has
18 streamed in the recent past. This list contains more than 2,500 program titles, many
19 owned by AIME members. *See* Exhibit 3.
20

22 92. A review of this list reveals that the scale of the Defendants' copyright
23 infringing activities is massive. Seven AIME members, including AVP, have 158
24 titles on the list that the Defendants have copied, streamed and otherwise exploited
25 using HVS' Video Furnace system.
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1 93. What Exhibit 3 does not specify and what UCLA refused to provide AIME in
2 response to the information request, is the number of times each program was
3 streamed. All AIME knows from UCLA's statement to AVP is that 13 AVP DVDs
4 were streamed by UCLA more than 130 times, or in excess of 10 times each. If a
5 comparable number of streams occurred with regard to other AIME members, then the
6 number of infringements against AIME members could exceed 1,100. Whether such
7 streaming activity constitutes infringement of the copyrights of AIME members is for
8 them to pursue individually. However, given the known infringement of AVP's
9 works, the presence of AIME members' programs on the streaming list, and the
10 Defendants' stated determination to continue their streaming activities, AIME seeks a
11 prospective, declaratory injunction prohibiting the Defendants from engaging in future
12 copying and streaming of content licensed from AIME members without the
13 Defendants first obtaining consent directly from the affected AIME members, as
14 required by UCLA copyright policy.

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19 94. AVP and other AIME members license their video catalog to thousands of
20 educational institutions. If UCLA's actions in assisting in the development of Video
21 Furnace and lending its reputation to HVS's marketing of Video Furnace influenced
22 other institutions to purchase Video Furnace, then the huge numbers of UCLA
23 streamed titles could similarly influence other educational institutions to unlawfully
24 exploit their catalogs, which are likely to include AIME member programs. In such
25 event, the prospective harm to the copyright interests of AIME and AIME members
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1 could be magnified enormously. Since AIME's mission is to help ensure compliance
2 with copyright laws for the benefit of its members and the public, the ongoing,
3 flagrant copyright violations by the Defendants has directly damaged AIME's ability
4 to serve its members and recruit new members.
5

6
7 **COUNT I**
8 **BREACH OF 2006-2007 AVP LICENSE**

9 95. AVP realleges and incorporates herein the allegations in Paragraphs 1-94.

10 96. Plaintiff AVP has duly performed each and every covenant and/or condition of
11 the 2006-2007 AVP License.

12 97. As described above, the Defendants in their official and individual capacities
13 have breached numerous covenants contained in the 2006-2007 AVP License,
14 including the following:
15

- 16 a. to license the AVP DVDs only in 16mm film, DVD or video cassette format;
17
18 b. not to duplicate, broadcast or transmit the AVP DVD on any multi-receiver
19 open or Internet system;
20
21 c. not to derogate AVP's rights under U.S. copyright law;
22
23 d. to terminate the AVP Licenses on notification of breach and failure to cure and
24 to return all copies of the AVP DVDs as demanded;
25
26 e. to exhibit AVP DVDs only in their entirety and not to copy, duplicate,
27 sublicense or sublease or part with possession thereof;
28
f. to exhibit the AVP DVDs only to non-paying private audiences;

- 1 g. to perform or exhibit the AVP DVDs only with complete copyright notices and
- 2 credits contained therein, and;
- 3 h. not to cut, alter or edit the AVP DVDs.

4
5 98. Plaintiffs have suffered damages as a direct and proximate result of Defendants'
6 breaches of contractual covenants, and Defendants are liable to Plaintiff AVP for such
7 breaches, including monetary damages, payment of maximum attorneys permitted by
8 law, return of the AVP Shakespeare DVDs, and may be prospectively enjoined from
9 future breaches.
10

11
12 **COUNT II**
13 **ANTICIPATORY BREACH OF 2008-2011 AVP LICENSE**

14 99. AVP realleges and incorporates herein the allegations in Paragraphs 1-98.

15 100. Plaintiff AVP has duly performed each and every covenant and/or condition of
16 the 2008-2011 AVP License.
17

18 101. Defendants in their official and individual capacities have clearly
19 communicated to Plaintiffs their intention to continue using the HVS Video Furnace
20 to unlawfully exploit AVP DVDs, including DVDs licensed under the 2008-2011
21 AVP License, which intention is without justification, thereby repudiating the
22 following terms and conditions under that license:
23

- 24 a. the term that prohibits duplication, broadcast, transmission on any multi-
25 receiver open or Internet system;
26

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- 1 b. the covenant that Ambrose's rights under U.S. copyright law will not be
2 derogated;
3 c. the default provision by refusing to allow AVP to repossess the DVDs after
4 notice and demand on February 11, 2011;
5
6 d. the requirement that the licensee shall not sublicense or sublease or part with
7 possession of any AVP DVD;
8
9 e. the provisions that the Content can be used only "in an educational OR home
10 video setting;"
11
12 f. the covenant prohibiting use of Plaintiff AVP's trademarks that appear on its
13 website "without express written consent;" and
14
15 g. the express and/or implied covenant that UCLA will pay a higher price for
16 streaming rights.

17 102. Such communications by Defendants in their official and individual capacities
18 constitute anticipatory breaches of its obligations under the 2008-2011 AVP License.

19 103. Plaintiffs have suffered damages as a direct and proximate result of Defendants'
20 anticipatory breaches of contractual covenants, and Defendants are liable to Plaintiff
21 AVP for such breaches, including monetary damages, payment of maximum attorneys
22 permitted by law, return of the AVP DVDs, and may be prospectively enjoined from
23 future breaches.
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27 **COUNT III**
28 **COPYRIGHT INFRINGEMENT**

1 104. AVP realleges and incorporates herein the allegations in Paragraphs 1-103,
2 inclusive.

3 105. Defendants Ms. O'Donnell, Dr. Farb, Mr. Loehner, Dr. Block and Mr. Yudof,
4 alone or in conjunction with the other Defendants and John Does 1-50, had access to
5 all AVP Shakespeare DVDs and directly copied or authorized the copying of the
6 AVP Shakespeare DVDs; prepared or authorized the preparation of derivative works
7 based on the AVP Shakespeare DVDs; publicly distributed or authorized the public
8 distribution of the AVP Shakespeare DVDs; publicly performed or authorized the
9 public performance of the AVP Shakespeare DVDs; and publicly displayed or
10 authorized the public display of the AVP Shakespeare DVDs, all in violation of the
11 AVP Licenses. All Defendants contributed to these infringements as set forth herein.
12

13 106. At all times relevant hereto, Plaintiff AVP has been and is the owner of all
14 pertinent exclusive copyright rights in and to the AVP Shakespeare DVDs and all
15 other DVDs licensed to the Defendants. AVP Shakespeare DVDs are original works
16 of authorship, registered with the U.S. Copyright Office. Evidence of registration of
17 numerous programs is attached hereto as Exhibit 23.
18

19 107. Defendants in their official and individual capacities have repeatedly engaged
20 in the infringements described in Paragraph 105 after being told by AVP to cease such
21 infringements.
22

23 108. Defendants' actions are unauthorized by Plaintiff AVP and constitute
24 violations of Plaintiff AVP's exclusive rights to control reproduction, public
25
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1 performance, public distribution, public display of and creation of derivative works
2 from AVP Shakespeare DVDs, all in violation of 17 U.S.C. §106.

3 109. Unless prospectively enjoined by this Court, Defendants will continue to
4 infringe Plaintiff AVP's copyrights in and relating to the AVP Shakespeare DVDs and
5 other AVP DVDs licensed to UCLA.
6

7 110. Defendants' infringements were willful in that Defendants acted with actual
8 or constructive knowledge that their actions constituted direct and/or contributory
9 infringement and they acted with reckless disregard to Plaintiff AVP's rights.
10

11 111. Plaintiff AVP is entitled to receive all appropriate injunctive relief, including
12 but not limited to prospective injunctive relief, a return of all AVP Shakespeare DVDs
13 and other AVP DVDs, destruction of all digital files made from the AVP Shakespeare
14 DVDs, and all other relief available under 17 U.S.C. §§502-503.
15

16 112. Plaintiff AVP is further entitled to recover from the Defendants the damages,
17 including attorneys' fees, it has sustained and will sustain, and any gains, profits and
18 advantages obtained by Defendants as a result of Defendants' willful acts of
19 infringement alleged in this Complaint, including but not limited to such damages and
20 awards as are available under 17 U.S.C. §§ 504-505.
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22

23 **COUNT IV**

24 **DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS OF LAW**

25 113. AVP realleges and incorporates herein the allegations in Paragraphs 1- 112,
26 inclusive.
27
28

1 114. AVP enjoys a constitutionally protected property interest in its copyrights in the
2 AVP DVDs.

3
4 115. Defendants' direct, willful and intentional conduct, in addition to constituting
5 copyright infringement, has deprived AVP of its constitutionally protected property
6 interest.

7
8 116. Defendants' deprivation of AVP's constitutionally protected property interest
9 was done without due process of law because AVP had no access to process prior to
10 the taking of its property, nor does it have a post-deprivation remedy.

11
12 117. Suits against Defendants in their individual capacities do not provide an
13 adjudication of the liability of the State for the infringements of AVP's copyright
14 rights, nor is there any other means to adjudicate the State's liability.

15
16 118. Further, California law preempts causes of action for any claims that are
17 equivalent to any of the exclusive rights of copyright owners, and there is no other
18 adequate remedy that would compensate AVP for Defendants' infringements.

19
20 119. Accordingly, AVP is entitled to relief under 17 U.S.C. § 501 for Defendants'
21 deprivation of its property without due process of law.

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24 **COUNT V**
25 **DECLARATORY RELIEF IN FAVOR OF PLAINTIFF AIME**

26 120. AIME realleges and incorporates herein the allegations in Paragraphs 1-119,
27 inclusive.

1 121. AIME, in its capacity as an associational Plaintiff, seeks declaratory and further
2 relief to declare that the Defendants' DVD streaming practices violate copyright law
3 and to prevent the Defendants from engaging in future copying, preparation of
4 derivative works, publicly performing, publicly distributing and publicly displaying
5 copyrighted DVDs of AIME members in a manner that will violate the copyright
6 rights of AIME members and pertinent licenses.
7

8
9 122. AIME in its capacity as an associational Plaintiff seeks a declaration to ensure
10 that UCLA's copyright policy requiring consent of copyright owners to reformat
11 DVDs is not violated.
12

13 123. AIME, in its own right, seeks declaratory and further relief to prevent the
14 Defendants from engaging in future practices that violate the copyright rights of its
15 members and that violate UCLA's copyright policies, which violations are causing
16 and, unless enjoined will continue to cause, serious injury threatening AIME's
17 survival as an association.
18

19 124. The further relief AIME seeks pursuant to 28 U.S.C. §2201(a) and 2202 and the
20 Copyright Act, is to prohibit the Defendants from engaging in future copying,
21 preparation of derivative works, public performance, public distribution and public
22 display of content licensed from AIME members (*see* Exhibit 1) without the
23 Defendants' first obtaining consent directly from the affected AIME member.
24
25

26 **COUNT VI**
27 **VIOLATION OF THE ANTICIRCUMVENTION**
28 **PROVISIONS OF 17 U.S.C. §1201**

1 125. AVP realleges and incorporates herein the allegations in Paragraphs 1-124
2 inclusive.
3

4 126. By the actions alleged in this Complaint, Defendants in their official and
5 individual capacities have on a direct and/or contributory basis, circumvented, or
6 allowed, authorized, or sanctioned the circumvention of technological measures that
7 effectively control access to AVP Shakespeare DVDs in violation of 17 U.S.C.
8 §1201(a) and (b). Defendants did not have lawful access to AVP Shakespeare DVDs
9 for the uses made of them. Upon information and belief, they have continued to
10 access them after notice on February 11, 2011 to cease such use and return all copies
11 thereof.
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14 127. Further, by the actions alleged in this Complaint, Defendants in their official
15 and individual capacities have on a direct and/or contributory basis acted or allowed,
16 authorized, or sanctioned the action in collaboration with HVS to traffic in
17 technology, products, services, devices, components or parts thereof that are primarily
18 designed or produced for the purpose of circumventing a technological measure that
19 effectively controls access to AVP Shakespeare DVDs, that have only limited
20 commercially significant purpose or use other than to circumvent a technological
21 measure that effectively controls access to a work protected under copyright law, and
22 that have been marketed by HVS in collaboration with the Defendants with
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1 knowledge for use in circumventing technological measures that effectively control
2 access to works protected under copyright law, all in violation of §1201(a).

3 128. By the actions described in this Complaint, Defendants in their official and
4 individual capacities have on a direct and/or contributory basis acted or allowed,
5 authorized, or sanctioned the action in collaboration with HVS to traffic in
6 technology, products, services, devices, components or parts thereof that are primarily
7 designed or produced for the purpose of circumventing protection afforded to AVP of
8 a technological measure that effectively protects rights of AVP as copyright owner or
9 the owner of all exclusive rights in copyrighted works, that have only limited
10 commercially significant purpose or use other than to circumvent protections afforded
11 by a technological measure that effectively protects a right of AVP under copyright
12 law, and that have been marketed by HVS in collaboration with Defendants with
13 knowledge for use in circumventing protection afforded by a technological measure
14 that effectively protects a right of AVP under copyright law, all in violation of 17
15 U.S.C. §1201(b).
16

17 129. Defendants' actions were willful in that they acted with actual or constructive
18 knowledge that their actions directly and/or on a contributory or vicarious basis
19 constituted infringement or they acted with reckless disregard to AVP's rights.
20

21 130. AVP is entitled to receive all appropriate relief, including but not limited to the
22 damages, injunctive and declaratory relief available under 17 U.S.C. §1203 and under
23 28 U.S.C. §§2201(a) and 2202.
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COUNT VII
**BREACH OF THE IMPLIED CONTRACTUAL
COVENANTS OF GOOD FAITH AND FAIR DEALING**

131. AVP realleges and incorporates herein the allegations in Paragraphs 1-130 inclusive.

132. As described above, Defendants in their official and individual capacities have acted or allowed, authorized, or sanctioned the action in bad faith, *inter alia*, by causing UCLA to breach various contractual covenants contained in the 2006-2007 AVP License and to anticipate the breach of the 2008-2011 AVP License. The Defendants have also publicly distributed copies of the AVP Shakespeare DVDs without Closed Captioning as required by law and UC policies.

133. The Defendants have also violated express UCLA policy that prohibits the reformatting of AVP DVDs without AVP's prior consent.

134. The conduct described herein constitutes breaches and anticipatory breaches of Defendants' implied-in-law covenants of good faith and fair dealing with respect to the AVP Licenses and violations of the orders, policies and commitments of UC and UCLA made pursuant to public pronouncements and relied upon by AVP.

135. By reason of such conduct, Defendants are liable to Plaintiff AVP for general and special compensatory damages and punitive damages.

COUNT VIII
UNJUST ENRICHMENT

136. AVP realleges and incorporates herein the allegations in Paragraphs 1- 135 inclusive.

1 137. As described above, Defendants' illegal actions have enabled them to expand
2 their content offerings to its students, who pay for educational services, and resources
3 for faculty, which include access to educational content like AVP Shakespeare DVDs.

4
5 138. Defendants enjoyed the benefits of these programs without paying for the
6 privilege to use them, and thereby the Defendants profited unjustly. Despite
7 Plaintiffs' demands, Defendants failed, neglected and refused to pay the amounts due
8 and owing to Plaintiff AVP. As a consequence of Defendants' actions, Plaintiff AVP
9 has been denied financial compensation and credit in connection with exploitation of
10 their DVDs as contemplated by the AVP Licenses, all to UCLA's unjust enrichment.
11
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14 **COUNT IX**
15 **TORTIOUS INTERFERENCE WITH**
16 **CONTRACTUAL RELATIONS**

17 139. AVP realleges and incorporates herein the allegations in Paragraphs 1- 138
18 inclusive.

19 140. By virtue of Defendants' licensing AVP Shakespeare DVDs, Defendants
20 obtained access to works for which AVP owes a contractual duty to compensate third
21 parties, including the BBC, for certain uses of the DVDs. Further, pursuant to
22 agreements with the BBC, AVP has an obligation to pursue infringements of the AVP
23 Shakespeare DVDs copyrights and AVP Licenses. AVP Licenses incorporate the
24 obligations and duties owed to third parties.
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1 141. However, with knowledge of and without regard to AVP's business relationship
2 with the BBC, utilizing HVS's Video Furnace, Defendants in their official and
3 individual capacities have interfered with AVP's contractual obligations to the BBC
4 and the BBC's contractual obligations to third parties by, inter alia.

5
6 a. Making it impossible for AVP to fulfill its payment and audit obligations to the
7 BBC;

8
9 b. Causing AVP and the BBC to breach contractual obligations to guilds and other
10 parties involved in the exploitation of the AVP Shakespeare DVDs; and

11 c. Causing AVP to breach its agreement with the BBC, pursuant to which AVP
12 acquired exclusive rights to the BBC's "The Plays of William Shakespeare"
13 only in the United States and U.S. territories, because Defendants have no
14 control over the number of copies distributed or where faculty and students
15 may exploit the program.
16
17

18 142. The actions of Defendants were intentional and continued after notice of AVP's
19 obligations and demand to stop.
20

21 143. By reason of such conduct, Defendants have tortiously interfered with AVP's
22 contractual relationships with the BBC and others, and their contractual relationships
23 with other parties, causing harm to such relationships and rendering Plaintiff AVP
24 potentially liable to claims from such third parties.
25

26 144. By reason of such conduct, Defendants are liable to Plaintiff AVP for general
27 and special compensatory damages and punitive damages.
28

COUNT X
**TORTIOUS INTERFERENCE WITH PROSPECTIVE
BUSINESS ADVANTAGE**

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3 145. AVP realleges and incorporates herein the allegations in Paragraphs 1- 144
4 inclusive.

5
6 146. A significant part of AVP's revenue comes from the sale of its DVD products at
7 affordable prices to professors and students.

8
9 147. By UCLA's copying and distribution of AVP Shakespeare DVDs to faculty and
10 students, in violation of the 2006-2007 AVP License, UCLA is depriving Plaintiffs of
11 this huge marketplace, since the professors and students can now obtain the products
12 free and no longer have any incentive to purchase multiple products to accommodate
13 student demand.

14
15 148. Defendants had knowledge of AVP's practice of selling DVDs to professors
16 and students.

17
18 149. The actions of Defendants were intentional and continued after notice of AVP's
19 obligations and demand to stop.

20
21 150. By reason of such conduct, Defendants have tortiously interfered with AVP's
22 prospective business advantage.

23
24 151. By reason of such conduct, Defendants are liable to Plaintiff AVP for general
25 and special compensatory damages and punitive damages.

26 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:
27
28

1 A. Permanently enjoining and restraining Defendants, their officers,
2 directors, shareholders, agents, employees, and attorneys and all those acting in
3 concert with them from:

- 4
- 5 1. Infringing the copyrights of AVP in the AVP Shakespeare DVDs
6 and any other AVP DVD in any manner, including but not limited to
7 reproducing, publicly distributing them, publicly displaying them,
8 creating derivative works from them, or publicly performing them in any
9 medium except as expressly authorized by contract or law;
 - 10 2. Circumventing DRM technology designed to limit access to and
11 copying of AVP DVD programs;
 - 12 3. Violating the AVP Licenses and failing to return the AVP DVDs
13 as required by the termination of the AVP Licenses;
 - 14 4. Prospectively infringing the copyrights of AIME members, who
15 have licensed or will license DVD programs to UCLA, by copying and
16 streaming such DVD content without the consent of AIME members; and
 - 17 5. Prospectively violating UC and UCLA published copyright
18 policies.

19 B. Ordering that Defendants file with this Court and serve upon Plaintiffs
20 within 20 days after the service of such injunction, an affidavit, sworn to under
21 penalty of perjury, setting forth in detail the manner and form in which Defendants
22 have complied with such injunction.
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1 C. Ordering an accounting of all revenues received by Defendants as a result
2 of their unlawful conduct.

3 D. Ordering Defendants to pay all license fees, including interest, due and
4 owing for the exploitation of AVP Shakespeare DVDs, maximum attorney fees
5 permitted by law, and other damages for breach of contractual obligations and
6 interference with AVP's agreements with third parties, including the BBC;
7

8 E. Awarding AVP: 1) Defendants' profits realized as a result of a) the
9 breach of contract, b) copyright infringement, c) violation of the DMCA and d) unjust
10 enrichment; 2) damages sustained by Plaintiff AVP, including damages arising from
11 Defendants' intentional and willful conduct under Sections 503 and 1203; and 3) the
12 costs of this action.
13

14 F. Awarding AVP statutory damages and attorney's fees pursuant to 17
15 U.S.C. §§ 504-505.
16

17 G. Awarding AVP punitive damages in an amount to be determined.
18

19 H. Awarding AVP prejudgment and post-judgment interest on any monetary
20 award in this action.
21

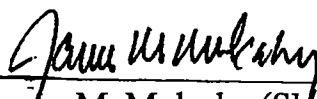
22 I. Declaring that Defendants' practice of streaming AIME member DVDs
23 violates copyright law.
24

25 J. Granting such other and further relief as to this Court deems just and
26 proper.
27

28 DATED: October 24, 2011

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Respectfully Submitted,



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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues triable to a jury.

DATED: October 24, 2011



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